



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street
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April 1, 2020

By ECF

The Honorable Lorna G. Schofield
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *PEN American v. Trump*, 18 Civ. 9433 (LGS)

Dear Judge Schofield:

This Office represents defendant President Donald J. Trump in his official capacity as the President of the United States (the “government”) in this First Amendment action brought by plaintiff PEN American Center, Inc. (“PEN American”). The government respectfully requests a six-week extension of the time to file an Answer in this action, from April 7, 2020, to May 19, 2020. This is the government’s first request for an extension of time to file an Answer. Plaintiff’s counsel does not consent to this extension request.

The requested extension is necessary in light of the national emergency created by COVID-19. Filing an Answer will require coordination with the White House, including further review by White House staff of the allegations in plaintiff’s Amended Complaint that were not dismissed by this Court. In light of the resources and staffing being allocated by the government to responding to this national emergency, the government respectfully requests that the government be given six additional weeks to file an Answer in this action.

In addition, the government is exploring the possibility of seeking an order from this Court pursuant to 28 U.S.C. § 1292(b), certifying the Court’s March 24, 2020 Opinion and Order on the government’s motion to dismiss for an interlocutory appeal. *See* ECF No. 76. As the Court is aware, the Office of the Solicitor General would need to approve any such motion to be made to the Court. The requested extension of time will also allow government counsel to consult on the certification question and possibly seek approval from the Office of the Solicitor General.

Plaintiff objects to the requested extension. Plaintiff’s position is as follows: While Plaintiffs are certainly willing to entertain reasonable requests related to the consequences of the coronavirus pandemic that explain the need for an extended delay, it is our understanding that the Department of Justice is fully open. Moreover, consultations necessary to answer a complaint can be, and are, customarily conducted by email and telephone. A six-week extension is not warranted to answer a pared-down complaint that has been in the government’s possession for more than a year.

I thank the Court for its consideration of this submission.

Respectfully submitted,

GEOFFREY S. BERMAN

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